

Minnesota 5 – Wilkin (CMA486) Spectrum Screen Triggered in 3 of 12 Counties (Big Stone, Swift & Traverse) Post-Transactions: VZW Would Exceed Screen by 2 MHz in Big Stone and Traverse, and by 4 MHz in Swift	
County	Other “In-Screen” Spectrum Holders
Big Stone	Total: 7 AT&T; DISH; LL License Holdings; SkyCom; Sprint; Swiftel; T-Mobile
Swift	Total: 8 AT&T; Clearwire; DISH; Savary Island; Sioux Falls PCS; SkyCom; Sprint; T-Mobile
Traverse	Total: 7 AT&T; DISH; LL License Holdings; SkyCom; Sprint; Swiftel; T-Mobile

Minnesota 8 – Lac qui Parle (CMA489) Spectrum Screen Triggered in 4 of 5 Counties (Lac qui Parle, Lincoln, Lyon & Yellow Medicine) Post-Transactions: VZW Would Exceed Screen by 4 MHz in Lac qui Parle, and by 14 MHz in Lincoln, Lyon & Yellow Medicine	
County	Other “In-Screen” Spectrum Holders
Lac qui Parle	Total: 9 AT&T; DISH; Long Lines; RC Technologies; Redwood Tel; Savary Island; Sioux Falls PCS; Sprint; T-Mobile
Lincoln	Total: 9 AT&T; DISH; Long Lines; Minnesota Valley TV; Redwood Tel; Savary Island; Sioux Falls PCS; Sprint; T-Mobile
Lyon	Total: 9 AT&T; DISH; Long Lines; Minnesota Valley TV; Redwood Tel; Savary Island; Sioux Falls PCS; Sprint; T-Mobile
Yellow Medicine	Total: 9 AT&T; DISH; Long Lines; Minnesota Valley TV; Redwood Tel; Savary Island; Sioux Falls PCS; Sprint; T-Mobile

Minnesota 9 – Pipestone (CMA490) – 2 of 9 counties Spectrum Screen Triggered in 2 of 9 Counties (Murray & Pipestone) Post-Transactions: VZW Would Exceed Screen by 7 MHz in Pipestone, and by 9 MHz in Murray	
County	Other “In-Screen” Spectrum Holders
Murray	Total: 9 AT&T; Clearwire; DISH; Long Lines; Redwood Tel; Savary Island; Sioux Falls PCS; Sprint; T-Mobile
Pipestone	Total: 7 AT&T; Clearwire; DISH; Long Lines; Sioux Falls PCS; Sprint; T-Mobile

Minnesota 11 – Goodhue (CMA492) Spectrum Screen Triggered in 4 of 7 Counties (Dodge, Fillmore, Mower & Wabasha) Post-Transactions: VZW Would Exceed Screen by 2 MHz in in Fillmore & Mower, and by 12 MHz in Dodge and Wabasha	
County	Other “In-Screen” Spectrum Holders
Dodge	Total: 10 AT&T; Clearwire; DISH; King Street; Midwest AWS; NEIT Wireless; Savary Island; Sprint; T-Mobile; U.S. Cellular
Fillmore	Total: 11 AT&T; Clearwire; DISH; King Street; Michigan Wireless; Midwest AWS; NEIT Wireless; Savary Island; Sprint; T-Mobile; U.S. Cellular
Mower	Total: 11 AT&T; Clearwire; DISH; King Street; Michigan Wireless; Midwest AWS; NEIT Wireless; Savary Island; Sprint; T-Mobile; U.S. Cellular
Wabasha	Total: 10 AT&T; Clearwire; DISH; King Street; Midwest AWS; NEIT Wireless; Savary Island; Sprint; T-Mobile; U.S. Cellular

Mississippi 4 – Yalobusha (CMA496) – 2 of 6 counties Spectrum Screen Triggered in 2 of 6 Counties (Calhoun & Monroe) Post-Transactions: VZW Would Exceed Screen by 2 MHz	
County	Other “In-Screen” Spectrum Holders
Calhoun	Total: 9 AT&T; Barat Wireless; C Spire; Cable One; CenturyTel; Clearwire; DISH; T-Mobile; Waller
Monroe	Total: 10 AT&T; Barat Wireless; C Spire; Cable One; CenturyTel; Clearwire; DISH; Sprint; T-Mobile; Waller

Missouri 9 – Bates (CMA512) Spectrum Screen Triggered in 1 of 5 Counties (Cedar) Post-Transactions: VZW Would Exceed Screen by 4 MHz	
County	Other “In-Screen” Spectrum Holders
Cedar	Total: 10 AT&T; Barat Wireless; CenturyTel; Clearwire; Commnet Midwest; DISH; Sprint; T-Mobile; TNA Mobile; U.S. Cellular

Raleigh-Durham, NC (CMA071) Spectrum Screen Triggered in All 3 Counties (Durham, Orange & Wake) Post-Transactions: VZW Would Exceed Screen by 9 MHz	
County	Other “In-Screen” Spectrum Holders
Durham	Total: 7 AT&T; Clearwire; DISH; King Street; Leap; Sprint; T-Mobile
Orange	Total: 7 AT&T; Clearwire; DISH; King Street; Leap; Sprint; T-Mobile
Wake	Total: 7 AT&T; Clearwire; DISH; King Street; Leap; Sprint; T-Mobile

Toledo, OH-MI (CMA048) Spectrum Screen Triggered in 4 of 5 Counties (Fulton, Lucas, Ottawa & Wood) Post-Transactions: VZW Would Exceed Screen by 2 MHz	
County	Other "In-Screen" Spectrum Holders
Fulton	Total: 7 Aloha Wireless; AT&T; Cavalier Wireless; Clearwire; DISH; Sprint; T-Mobile
Lucas	Total: 8 Aloha Wireless; AT&T; Cavalier Wireless; Clearwire; DISH; Revol; Sprint; T-Mobile
Ottawa	Total: 8 Aloha Wireless; AT&T; Cavalier Wireless; Clearwire; DISH; Revol; Sprint; T-Mobile
Wood	Total: 8 Aloha Wireless; AT&T; Cavalier Wireless; Clearwire; DISH; Revol; Sprint; T-Mobile

Florence, SC (CMA264) Spectrum Screen Triggered in the Sole County (Florence) Post-Transactions: VZW Would Exceed Screen by 7 MHz	
County	Other "In-Screen" Spectrum Holders
Florence	Total: 7 AT&T; Clearwire; DISH; FTC Management; Horry Telephone; Sprint; T-Mobile

Texas 7 – Fannin (CMA658) Spectrum Screen Triggered in 1 of 15 Counties (Cass) Post-Transactions: VZW Would Exceed Screen by 9 MHz	
County	Other "In-Screen" Spectrum Holders
Cass	Total: 8 Aloha Wireless; AT&T; Clearwire; DISH; MetroPCS; Peoples Telephone; Sprint; T-Mobile

Exhibit 6

Addendum Concerning the Commercial Agreements

ADDENDUM CONCERNING THE COMMERCIAL AGREEMENTS

For the reasons set forth in the Applicants' Opposition, the Commercial Agreements are outside the scope of this license transfer proceeding, as well as the Commission's jurisdiction.¹ For completeness, however, Applicants address the principal criticisms leveled by commenters against the Commercial Agreements. As explained below, commenters' criticisms are factually and legally baseless and are not supported by Commission precedent. Indeed, although commenters profess concern that the Commercial Agreements may reduce competition or otherwise harm the public interest, many commenters – who are also competitors – are obviously concerned that the agreements will actually enhance competition and increase consumer choice to their detriment.

A. The Commercial Agreements Will Produce More Consumer Choice and Increased Competition, Not Facilitate Illegal Collusion

Several commenters speculate that the Commercial Agreements may facilitate “collusion” between Verizon Telecom and the MSOs.² These arguments are speculative and unfounded.

First, Verizon Telecom is not a party to the Commercial Agreements and will receive no information or data from the MSOs concerning the implementation of these agreements. The Commercial Agreements are between the MSOs and *Verizon Wireless*, not Verizon Wireless's parent Verizon Communications or Verizon Telecom (which includes the entity that provides

¹ This Exhibit refers to Bright House Networks, Comcast Cable, Cox Communications, and Time Warner Cable collectively as the “MSOs,” and to the MSOs and Verizon Wireless together as “Applicants.” Except as otherwise indicated, all capitalized terms used herein have the meanings ascribed to them in the Opposition.

² Petition to Deny of T-Mobile, USA, Inc. (“T-Mobile”) at 18–20; Petition to Condition or Otherwise Deny Transactions of RCA – The Competitive Carriers Association (“RCA”) at 37; Petition to Deny of NTCH, Inc. (“NTCH”) at 11; Petition to Deny of Public Knowledge *et al.* (“Public Knowledge”) at 18–19.

FiOS). And the MSOs and Verizon Telecom each have strong incentives to prevent the exchange of commercially sensitive information as such exchanges could disadvantage them in the marketplace. For these reasons, and to ensure compliance with the antitrust laws, the Commercial Agreements incorporate provisions that [BEGIN HIGHLY CONFIDENTIAL]

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CONFIDENTIAL] The DOJ/FTC *Competitor Collaboration Guidelines* recognize that such safeguards and firewalls mitigate the risk of improper information sharing in joint ventures.⁴ Thus, there is no plausible basis on which to conclude that the Commercial Agreements will facilitate collusion between or among any competing businesses.⁵

Second, contrary to the suggestion of Public Knowledge and others, the composition of the board of the Innovation Technology Joint Venture will not serve as a basis for collusion.⁶ The Innovation Technology Joint Venture's scope is limited to developing technologies that enable [BEGIN HIGHLY CONFIDENTIAL]

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⁴ Dep't of Justice & Fed. Trade Comm'n, ANTITRUST GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS § 3.34(e) (2000), <http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf>.

⁵ For example, the DOJ concluded that Movielink – a joint venture of Sony (Columbia-TriStar Pictures), Warner Bros., MGM, Paramount, and Universal to provide video-on-demand services – was unlikely to facilitate improper collusion among competitors. See Press Release, Dep't of Justice, Justice Department Closes Antitrust Investigation into the Movielink Movies-On-Demand Joint Venture (June 3, 2004), http://www.justice.gov/atr/public/press_releases/2004/203932.htm.

⁶ Public Knowledge Confidential Appendix at A-3; see Comments of DIRECTV, LLC ("DIRECTV") at 4 (claiming that the Innovation Technology Joint Venture provides "a ready-made forum for sharing information and coordinating strategies"); Petition to Deny or Condition Assignment of Licenses of Hawaiian Telcom Communications, Inc. ("Hawaiian Telcom") at 18–20.

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Third, instead of harming competition, the Commercial Agreements will provide more choice and convenience, increased competition, and greater investment and innovation in next-generation technology. The agency arrangements provide the MSOs and Verizon Wireless with a quick and efficient path to offer their customers the convenience of a “one-stop shop” for video, high-speed data, digital voice, and wireless services. Today, AT&T, DIRECTV, Dish Network, CenturyLink, and others offer multi-product bundles. The Commercial Agreements allow the MSOs and Verizon Wireless to respond to this competition with a top-notch suite of products of their own.⁹ This, in turn, will prompt competitive responses from other providers, all of which advances consumer welfare.¹⁰ Many commenters, who are also competitors of the

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⁹ See e.g., Comments of Free State Foundation at 10 (“We believe that the commercial agreements may offer public benefits, for example, through increased consumer choice through new bundled packages of services that otherwise would not be available, or not be available as conveniently on a one-stop basis.”).

¹⁰ See e.g., Comments of Technology Policy Institute (“Technology Policy Institute”) at 16 (“If this additional marketing (or additional value of the wireless bundle) makes cable more attractive, then other providers, such as AT&T, may be forced to upgrade their offerings or reduce prices to stay competitive.”).

Applicants, fear that increased competition will diminish their profits, but the public interest calculus, like the antitrust laws, focuses on “the protection of competition, not competitors.”¹¹

The Reseller Agreements will likewise increase competition and provide consumers with additional choice, convenience, and savings. If and when the MSOs exercise their reseller option, then customers will have a new option to select a bundle of offerings that includes branded wireless service from the MSOs, along with the MSOs’ video, voice, and high-speed data services. The Commission has recognized that reseller agreements exert pro-competitive pressure.¹² Here, the Reseller Agreements will allow the MSOs to compete more effectively against Verizon Telecom, the companies identified in the preceding paragraph, and others that already offer “quad play” bundles.

Likewise, the Joint Venture will benefit competition and the public interest by allowing Verizon Wireless and the MSOs to develop next-generation technologies that will enhance consumers’ communications and media experiences. In so doing, Verizon Wireless and the MSOs will join a race to develop integrated services in which other technology companies, such as Apple, Google, and Microsoft, are already making technological advances.

¹¹ See, e.g., *Applications of OTI Corp., and Its Shareholders, Transferors, and MCI Communications Corp., and MCI/OTI Corp., Transferees*, Order, 6 FCC Rcd 1611, 1612 ¶ 13 (CCB rel. Mar. 14, 1991) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)).

¹² See, e.g., *Applications of Cellco Partnership d/b/a Verizon Wireless and AT&T, Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and Request for Declaratory Ruling on Foreign Ownership*, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 10985, 11002 ¶ 36 (2010); *Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915, 13936 ¶ 45 (2009); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14000 ¶ 88 (2005) (“MVNOs and resellers . . . may provide additional constraints against anticompetitive behavior. In particular, independent resellers and MVNOs may be able to undercut the market leaders and thereby provide an additional constraint on coordinated interaction[.]”).

B. The Commercial Agreements Do Not Form a “Cartel”

Certain commenters argue that the Commercial Agreements are actually an attempt by the Applicants to form a “cartel.”¹³ For example, the Rural Telecommunications Group (“RTG”) asserts that the Innovation Technology Joint Venture “is a vehicle for Verizon [Telecom] to abandon its role as a competitor to the cable companies on the ‘wired’ side of the equation by allowing the fast-growing Verizon Wireless to collude with the [MSOs].”¹⁴

A cartel, however, is “[a] combination of producers or sellers that join together to control a product’s production or price.”¹⁵ Nothing in the Agency Agreements, the Reseller Agreements, or the Innovation Technology Joint Venture, however, will allow the MSOs or Verizon Wireless to control the production or price of the other’s products.

The Agency Agreements merely authorize the MSOs and Verizon Wireless to act as sales *agents* for one another – with pricing established in the sole discretion of the principal.¹⁶ Indeed, the Agency Agreements *expressly prevent* the parties from exercising any control or management responsibilities over one another’s businesses.¹⁷ Once the sales agent completes the

¹³ *E.g.*, Petition to Deny of Free Press (“Free Press”) at 38, 41–43.

¹⁴ Petition to Deny of Rural Telecommunications Group (“RTG”) at 27; *see* Hawaiian Telcom at 17 (stating that “the transaction may be viewed as an allocation of markets” among the MSOs, Verizon and Verizon Wireless).

¹⁵ *Freedom Holdings, Inc. v. Spitzer*, 447 F. Supp. 2d 230, 251 (S.D.N.Y. 2004) (quoting BLACK’S LAW DICTIONARY 206 (7th ed. 1999)) (internal quotation marks omitted); *accord* IIA PHILIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 405a, at 26 (2d ed. 2002) (“Competing firms form a cartel when they replace independent decisions with an *agreement on price, output, or related matters.*” (emphasis added)).

¹⁶ *Major League Baseball Props., Inc. v. Salvino, Inc.*, 542 F.3d 290, 318 (2d Cir. 2008) (rejecting plaintiff’s attempt to characterize an agency agreement as a cartel and explaining that, unlike cartels, which ordinarily result in reductions of output, agency agreements often result in expansion of output).

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sale, the subscriber becomes the customer of the principal – *not* a customer of the agent.¹⁸ These types of sales agency arrangements are pervasive in the telecommunications industry and have never been characterized as constituting a “cartel.”¹⁹

The Reseller Agreements likewise do not afford any party the right to control the production or price of another’s products. Once the Reseller Agreements are executed and implemented, the MSOs will simply purchase Verizon Wireless service on the wholesale level and resell it at the retail level. The MSOs will bear sole responsibility for and retain sole control over all aspects of their resale businesses.²⁰ As a mere supplier, Verizon Wireless will neither

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¹⁸ See, e.g., Comcast Agent Agreement § 2.13; VZW Agent Agreement (Comcast) § 2.10.
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¹⁹ See, e.g., Press Release, DIRECTV, AT&T and DIRECTV Sign Three-Year Extension Agreement to Deliver AT&T / DIRECTV to AT&T Customers (Nov. 3, 2011), <http://investor.directv.com/releasedetail.cfm?ReleaseID=620738>; Press Release, CenturyLink, Inc., DIRECTV and CenturyLink Sign Agreement to Offer Video Services to CenturyLink Customers (Aug. 12, 2010), <http://news.centurylink.com/index.php?s=43&item=57>; Press Release, Frontier Commc’ns Corp., Frontier Communications Teams with AT&T to Offer Wireless Voice and Data Products (Nov. 15, 2011), <http://phx.corporate-ir.net/phoenix.zhtml?c=66508&p=irol-newsArticle&ID=1630726&highlight=>; Press Release, SBC Commc’ns, Inc., SBC Communications, EchoStar Forge Strategic Partnership, Will Offer “SBC Dish Network” Television Service (Jul. 21, 2003), <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=20557>; Natalie Weinstein, CNET NEWS, *AT&T Drops Dish for DirecTV* (Sept. 27, 2008), http://news.cnet.com/8301-1035_3-10052944-94.html; Marguerite Reardon, CNET NEWS, *AT&T Ends Dish Satellite TV Partnership* (Jul. 2, 2008), http://news.cnet.com/8301-10784_3-9982808-7.html.

²⁰ See, e.g., Comcast Reseller Agreement § 5.3.**[BEGIN HIGHLY CONFIDENTIAL]**

exercise control over the MSOs' resale businesses nor share in the profits or losses of those businesses.

The Innovation Technology Joint Venture also does not constitute a cartel controlling the price, sales, or content of the Applicants' products. Indeed, the Innovation Technology Joint Venture will not sell any of the Applicants' existing services – whether wireline or wireless – or license or distribute content. Instead, the Innovation Technology Joint Venture will attempt to develop new technologies and intellectual property for “the integration of wireline video, voice, and high-speed data services with wireless technologies.”²¹ The Innovation Technology Joint Venture may license these technologies to others – thereby *increasing* the potential consumer benefits from the participants' investments.

C. Verizon Will Continue to Compete Vigorously with the MSOs Regardless of the Commercial Agreements

Several commenters argue that the Commercial Agreements will diminish Verizon's incentive to compete with the MSOs within the FiOS footprint.²² RTG, for example, argues that the Commercial Agreements give Verizon “a strong incentive . . . to stop delivering voice, Internet and video services via wires because it can reap those same benefits through Verizon Wireless entering into [the Commercial Agreements] with the . . . MSOs.”²³ This purported competitive harm is confined to a limited geographic area: FiOS is not even available in

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²² See Comments of International Brotherhood of Electrical Workers, Local 827 and System Council T-6 (“IBEW Local 827”) at 11; T-Mobile at 19.

²³ RTG at 28.

approximately eighty-five percent of the areas where the MSOs offer services. More important, such arguments ignore economic and business realities.

As an initial matter, Verizon is committed to FiOS, which has become an important growth engine for the company. Verizon has invested over \$23 billion in capital into its FiOS buildout, and grown the FiOS business from nothing in 2004 to an \$8.2 billion annual revenue business today. Verizon Telecom currently has approximately 4.2 million FiOS TV and 4.8 million FiOS Internet subscribers.²⁴ FiOS revenues now represent 61% of Verizon Telecom's wireline consumer revenues, and grew 18.2% over the last year alone.²⁵ And FiOS is growing by taking market share from its competitors – FiOS increased its market penetration in both TV and Internet by roughly 4% over the last year alone. Verizon's publicly stated strategy is to continue increasing FiOS' market share, since having more customers over the same shared plant increases FiOS' – and thus Verizon's – profitability. With the substantial initial investments in FiOS now largely complete, this product has become an ever growing source of positive cash flow for the company.

The Commercial Agreements in no way alter Verizon's commitment to FiOS. Verizon Wireless will not favor the MSOs over FiOS in its marketing and sales efforts, and customers will continue to choose among FiOS, the MSOs, and their competitors based on the merits of their services. Verizon will every have every incentive to offer attractive services on competitive terms.

Basic economics confirms that Verizon would only injure itself if it “pulled its punches” in competition with the MSOs. Each FiOS subscriber provides Verizon an ongoing monthly

²⁴ Verizon, *Verizon Communications Investor Quarterly 4Q 2011* at 14 (Jan. 24, 2012), available at http://www22.verizon.com/idc/groups/public/documents/adacct/2011_4q_quarterly_bulletin.pdf.

²⁵ *Id.*

revenue stream worth many thousands of dollars. By contrast, Verizon Wireless stands to earn

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Simply put, it would be economically irrational for Verizon to forego further increased FiOS market share gains, with resulting recurring revenue and margin hits to FiOS, in return for some small one-time commission payments to Verizon Wireless (only 55% owned by Verizon). The Commercial Agreements simply do not and will not create any incentives for Verizon to increase the prices or otherwise reduce competition in the sale and marketing of its wireline services.

D. Verizon Telecom's Incentives with Respect to Expansion of the FiOS Footprint Are Not Materially Affected by the Commercial Agreements

Certain commenters assert that the Commercial Agreements will discourage Verizon from undertaking an expansion of the FiOS footprint that it would have undertaken but for these

²⁶ Even this analysis significantly overstates the likelihood that the Commercial Agreements will result in higher prices or weaker competition from FiOS services. As an initial matter, it is highly improbable that the managers responsible for Verizon Telecom's FiOS business will sabotage that business even in the unlikely event that doing so would generate appreciable commissions for Verizon Wireless. In addition, Verizon has traditionally set the prices for FiOS services on a nationwide basis. Unless Verizon were willing to depart from these pricing practices, any price increase would result in loss of FiOS subscribers nationwide, but only possibly result in partially offsetting commissions in the limited geographies in which the FiOS and MSOs' footprints overlap.

agreements.²⁷ These assertions are baseless. As explained below, potential expansion of the FiOS footprint can be divided into two categories: (i) expansion in local franchise areas (“LFAs”) where FiOS is already present and (ii) expansion in LFAs where FiOS has no presence or regulatory approval to operate. The Commercial Agreements will not have a meaningful impact on Verizon Telecom’s plans to undertake either category of FiOS-footprint expansion.

First, Verizon Telecom has substantial, existing legal commitments to build out FiOS in the LFAs where it is already present. The Commercial Agreements have no impact on these legal obligations of Verizon Telecom.

Second, the Commercial Agreements will not affect Verizon’s incentives to expand the FiOS footprint to LFAs in which FiOS is not already present, because Verizon already had decided to end substantial new capital investment in FiOS in new markets *over two years ago* – well before Verizon Wireless entered into the Commercial Agreements. In particular, beginning in mid-2009, Verizon announced that it had no present plans to expand the FiOS footprint:

- On a July 27, 2009 earnings call, for example, Verizon CFO John Killian stated that Verizon was “on track to be substantially finished with [FiOS] deployment by the end of 2010, which has positive implications for both capital spending and free cash flow.”²⁸
- On September 10, 2009, Mr. Killian reiterated that Verizon would “be substantially done with [its FiOS build out] at the end of 2010.”²⁹

²⁷ *E.g.*, Public Knowledge at 22–23; Comments of the Communications Workers of America and the International Brotherhood of Electrical Workers (“CWA & IBEW”) at 6; IBEW Local 827 at 6.

²⁸ John Killian, Executive Vice President & Chief Financial Officer, Verizon, Q2 2009 Verizon Earnings Conference Call at 5 (Jul. 27, 2009), *available at* http://www22.verizon.com/idc/groups/public/documents/adacct/event_895_trans.pdf.

²⁹ John Killian, Executive Vice President & Chief Financial Officer, Verizon, Verizon at Bank of America Securities Media, Communications & Entertainment Conference at 6 (Sept. 10, 2009), *available at* http://www22.verizon.com/idc/groups/public/documents/adacct/event_905_trans.pdf.

- On October 26, 2009, Mr. Killian again stated that Verizon would “substantially complete [its] FiOS build program by the end of 2010, which alone should result in about \$2 billion of capital savings each year.”³⁰

As Mr. Killian noted, Verizon chose to generate free cash flow by slowing capital spending and focusing instead on market share gains in areas where capital had been spent.³¹ Commenters’ speculative argument that at some point Verizon, absent the Commercial Agreements, would reverse its current plan of record and spend billions more in scarce capital to further expand the FiOS footprint – beyond the expansion it is already undertaking – is completely baseless.

Third, basic economics suggests that the Commercial Agreements will have no discernible impact on Verizon Telecom’s incentives and disincentives to expand the FiOS footprint. Any commissions received by Verizon Wireless for sales of MSO services represent a fraction of the net present value of a Verizon Telecom FiOS subscriber. It is highly unlikely that the loss of these commissions (only 55% of which would flow to Verizon) would turn an otherwise profitable investment in FiOS expansion into an unprofitable one. No commenter has submitted an economic analysis suggesting any other result.

³⁰ John Killian, Executive Vice President & Chief Financial Officer, Verizon, Q3 2009 Verizon Earnings Conference Call at 6 (Oct. 26, 2009), *available at* http://www22.verizon.com/idc/groups/public/documents/adacct/event_917_trans.pdf; Marguerite Reardon, CNET NEWS, *Verizon Nears FiOS Network Completion* (Mar. 29, 2010), http://news.cnet.com/8301-30686_3-20001377-266.html (“Verizon Communications is nearly finished building its FiOS fiber-to-the-home network.”); Peter Svensson, USA TODAY, *Verizon winds down expensive FiOS expansion* (Mar. 26, 2010), http://www.usatoday.com/money/industries/telecom/2010-03-26-verizon-fios_N.htm (“Verizon is nearing the end of its program to replace copper phone lines with optical fibers that provide much higher Internet speeds and TV service.”).

³¹ See John Killian, Executive Vice President & Chief Financial Officer, Verizon, Q3 2009 Verizon Earnings Conference Call at 5–6 (Oct. 26, 2009), *available at* http://www22.verizon.com/idc/groups/public/documents/adacct/event_917_trans.pdf.

E. The Agency and Reseller Agreements Do Not Eliminate Actual or Potential Wireless Competition from the MSOs

Some commenters speculated that the MSOs would have become facilities-based wireless competitors but for the spectrum sale and the Commercial Agreements.³² The Rural Telecommunications Group claims, for example, that these agreements remove the MSOs “as potential facilities-based mobile wireless competitors” and thereby “place even greater negotiating power in the hands of Verizon Wireless.”³³

Such conjecture about “potential competition” is insufficient to support a plausible theory of competitive harm.³⁴ As detailed in the Opposition, the MSOs faced significant challenges in attempting to operate as a facilities-based mobile telephony/broadband service provider with the 20 MHz of spectrum that they hold.³⁵ Among other things, the MSOs do not currently operate any meaningful wireless network, and SpectrumCo and Cox have concluded that the costs and risks of building an independent network robust enough to provide the increasingly data-rich

³² RCA at 37–38; Public Knowledge at 22.

³³ RTG at 11–12.

³⁴ See, e.g., *In re Applications of Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferee for Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 2624, 2637 ¶ 25 (rel. Jan. 31, 1997) (concluding that opponents of the proposed transfer had not shown that it would be anti-competitive on a potential-competition theory where it was possible that SBC “would have entered the markets in question but for the proposed transfer,” but it was “at least equally plausible that SBC’s economic incentives [were], rather, to devote its capital to entering new product markets in its own region”). The U.S. Supreme Court has similarly recognized the damage that may result from enjoining a transaction based on speculative theories of harm to “potential competition.” Thus, the Court has held that, before a theory of potential competition may be applied to invalidate a transaction under Section 7 of the Clayton Act, the plaintiff must demonstrate, among other things, a “substantial likelihood of procompetitive loss.” *United States v. Marine Bancorp. Inc.*, 418 U.S. 602, 637 (1974). To preliminarily enjoin a transaction under such a theory, “the Government must do far more than merely raise sufficiently serious questions with respect to the merits to make them a fair ground for litigation.” *United States v. Siemens Corp.*, 621 F.2d 499, 506 (2d Cir. 1980).

³⁵ Opposition at §§ I.E.1, I.E.2; see also Public Interest Statement at 20–23.

services desired by wireless consumers today are unacceptably high. Indeed, Cox actually constructed a facilities-based network in two markets but never offered commercial facilities-based service in any of its markets, and decommissioned its network after it became clear that it would be unable to deploy its service without sustaining unacceptably large losses.³⁶ After exhaustively studying and evaluating its options for providing consumers with wireless service, SpectrumCo concluded that the costs and risks of building a wireless network – possible capital expenditures and cumulative negative net operating costs of roughly \$10–11 billion – were substantial.³⁷ Based on their analyses, SpectrumCo’s members and Cox reasonably concluded that the Agency and Reseller Agreements with Verizon Wireless would deliver more service choices to consumers much faster than any other option.³⁸ There is no basis in the communications laws or antitrust laws to compel companies to make investments in businesses when they have independently concluded that such investments would be unprofitable.

Unlike the proposed AT&T/T-Mobile transaction, the Agency and Reseller Agreements do not result in the elimination of any present (or foreseeable) wireless competition. Consumers will continue to have the same number of choices among wireless service providers as they did before these agreements were implemented. Should any MSO ultimately become a wireless reseller, as provided for in the Reseller Agreements, consumers will gain an additional, separately branded choice among wireless providers.

³⁶ Opposition at § I.E.2; Declaration of Suzanne Fenwick ¶¶ 5, 7; Press Release, Cox Commc’ns, Cox Communications to Discontinue Cox Wireless Service, Effective March 30, 2012 (Nov. 15, 2011), <http://cox.mediaroom.com/index.php?s=43&item=569>; Mike Robuck, *Cox to Shut Down Wireless Service*, CED MAGAZINE, Nov. 16, 2011, <http://www.cedmagazine.com/news/2011/11/cox-to-shut-down-wireless-service>.

³⁷ Opposition at § I.E.1; *see* Declaration of Robert Pick ¶¶ 10–16.

³⁸ Opposition at § I.E.1; *see* Declaration of Robert Pick ¶¶ 10–16.

F. Other Competitors Can Continue to Offer Multi-Product Bundles Regardless of the Agency and Reseller Agreements

Certain commenters argue that the Agency and Reseller Agreements will harm competition by precluding other competitors from offering multi-product bundles.³⁹ This argument too fails to state a plausible harm to competition.

First, the Agency and Reseller Agreements will not preclude other competitors from offering multi-product bundles. The relevant markets are highly competitive; for example, consumers typically enjoy a choice among several wireless providers and MVPDs, including two direct broadcast satellite providers. Wireless service providers and MVPDs therefore can create – and indeed have created – their own exclusive multi-product bundles by combining their offerings.⁴⁰

Second, the exclusivity provisions contained in the Agency and Reseller Agreements are necessary to ensure the pro-competitive benefits of those agreements. These agreements cannot be successful unless the parties remain committed to their success; the exclusivity provisions are needed to ensure this commitment.⁴¹ Indeed, other sales partnerships in the relevant markets – including partnerships that DIRECTV has entered into with AT&T and Verizon Telecom – have incorporated exclusivity provisions, without any objection from the Commission or the antitrust

³⁹ *E.g.*, NTCH at 11.

⁴⁰ *E.g.*, Press Release, DIRECTV, AT&T and DIRECTV Sign Three-Year Extension Agreement to Deliver AT&T | DIRECTV Service to AT&T Customers (Nov. 3, 2011), <http://news.directv.com/2011/11/03/att-and-directv-sign-three-year-extension-agreement-to-deliver-att-directv-service-to-att-customers/>.

⁴¹ *See Roland Machinery Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 395 (7th Cir. 1984) (Posner, J.) (explaining that exclusive arrangements often prevent free riding).

authorities. The antitrust laws recognize that exclusivity commitments are common in agency agreements and frequently enhance the procompetitive benefits of such agreements.⁴²

Third, while some providers offer multi-product bundles that include wireless and wireline services, such offerings are not a prerequisite for participation in the communications marketplace. For example, while Sprint and the MSOs have offered bundles that feature wireless and wireline services, those bundles have historically not accounted for a material percentage of Sprint's or the MSOs' subscribers.⁴³ And other providers, such as Cricket Wireless, continue to focus on offering services that consumers can purchase on a stand-alone basis.⁴⁴ Stand-alone-service providers will remain vital competitors because consumer can and do create their own bundles of wireless and wireline services from selecting services from different providers.⁴⁵ These consumer-created bundles compete against providers' own multi-product bundles, and the Commercial Agreements in no way alter this dynamic.

Fourth, to the extent certain commenters complain that the Agency and Reseller Agreements will adversely affect other competitors by improving Applicants' product offerings (such as by offering discounts or other benefits as Comcast and Verizon Wireless have already

⁴² See, e.g., Sheila F. Anthony, Commissioner, FTC, Vertical Issues in Federal Antitrust Law (Mar. 19, 1998) (explaining that an exclusivity commitment "may be procompetitive when it encourages retailers to invest in promoting the manufacturer's line, thereby enhancing *interbrand* competition at the retail level"), available at <http://www.ftc.gov/speeches/anthony/aliabaps.shtml>.

⁴³ See, e.g., Erica Ogg, CNET NEWS, *Comcast Walks Away from Pivot* (Apr. 23, 2008), http://news.cnet.com/8301-10784_3-9927428-7.html (explaining that "[b]y the end of [2007], demand was so low for Pivot [a partnership between Sprint and the MSOs] that they stopped marketing it").

⁴⁴ Cricket Wireless, Company Information, <http://www.mycricket.com/learn/cricket-wireless>; Alex Pham, LOS ANGELES TIMES, *Cricket Wireless has the Music Industry Feeling Chirpy* (Feb. 7, 2012), <http://www.latimes.com/business/la-fi-ct-cricket-20120207,0,2200481.story> (explaining how Cricket Wireless customers appeal to individuals whose cell phones, not computers, "are the center of their digital lives").

⁴⁵ See Ogg, *supra* note 43 (explaining that "[p]art of [Pivot's] problem [was] that nearly 80 percent of U.S. residents already subscribe to a cell phone service").

done in Seattle, Portland, and San Francisco) and forcing their competitors to offer lower prices or improved services,⁴⁶ these effects *promote* competition, *benefit* consumers, and *further* the public interest. These commenters appear to be advancing a form of an “efficiencies offense” (i.e., an objection to a transaction because it increases efficiency). Such an “efficiencies offense” has been categorically rejected and would turn both the antitrust laws and communications laws on their heads.⁴⁷

G. The Innovation Technology Joint Venture Will Enhance, Not Impede, Competition for Wireless/Wireline Integration Technologies

Several commenters speculate that the Innovation Technology Joint Venture will be used to develop proprietary technology that will either be forced upon others in the industry or used to impose interoperability barriers with others in the industry.⁴⁸ For example, Public Knowledge suggests that the size of the MSOs and Verizon Wireless would guarantee early adoption of technologies created through the Innovation Technology Joint Venture, thereby forcing others to follow suit and adopt the new technology.⁴⁹ But mere speculation concerning future misdeeds cannot override the competition authorities’ accepted approach to evaluating R&D ventures.

⁴⁶ CWA & IBEW at 14 (asserting that “offer[ing] multiple services to . . . consumer[s] . . . at a discount” and, thereby, gaining new customers from competitors, somehow constitutes unfair competition).

⁴⁷ See *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 487 (1977) (“Every merger of two existing entities into one . . . has the potential for producing economic readjustments that adversely affect some persons. But Congress has not condemned mergers on that account; it has condemned them only when they may produce anticompetitive effects.”); *Monfort of Colorado, Inc. v. Cargill, Inc.*, 479 U.S. 104, 117 (1986) (“To hold that the antitrust laws protect competitors from the loss of profits due to such price competition would, in effect, render illegal any decision by a firm to cut prices in order to increase market share. The antitrust laws require no such perverse result, for [it] is in the interest of competition to permit dominant firms to engage in vigorous competition, including price competition.”) (internal quotation marks omitted).

⁴⁸ Public Knowledge at 21, 40–41; RCA at 38; see *Hawaiian Telcom* at 18; CWA & IBEW at 19.

⁴⁹ Public Knowledge at 21, 40–41.

First, commenters ignore the realities of the marketplace, in which firms like Apple, Google, and Microsoft have been developing wireless/wireline integration technology for years.⁵⁰ Several of these firms have recently agreed to acquire large portfolios of intellectual property that pertain to wireless technology.⁵¹ The Innovation Technology Joint Venture will not have a monopoly on creativity and innovation. The Applicants are under no obligation to limit their purchases of technology to that developed by the Joint Venture. And Applicants have incentives to promote the use of their networks to enhance the value to consumers. As a result, other technology companies will still be able to “build a better mousetrap” – secure in the knowledge that, if they develop worthwhile applications, they will be able access plenty of potential customers. The Applicants’ customers will be able to download and enjoy these applications, because Applicants are committed to maintaining open networks. Indeed, Applicants will have every incentive to promote new applications, as they enhance the value of the networks themselves. The Innovation Technology Joint Venture represents a modest effort

⁵⁰ Press Release, Google Inc., Industry Leaders Announce Open Platform for Mobile Devices (Nov. 5, 2007), http://www.google.com/intl/en/press/pressrel/20071105_mobile_open.html (discussing Open Handset Alliance, Android, and the intersection of wireless and Internet technologies); Press Release, Google Inc., Sprint and Google Expand Relationship to Enable Richer Mobile Experience and More Choices for Sprint Customers (May 7, 2008), http://www.google.com/intl/en/press/pressrel/20080507_sprint_mobile.html (discussing improvement of “mobile Internet experience” on Sprint devices); Press Release, Apple Inc., Apple Launches iPad (Jan. 27, 2010), <http://www.apple.com/pr/library/2010/01/27Apple-Launches-iPad.html> (discussing “a revolutionary device for browsing the web, reading and sending email, enjoying photos, watching videos, listening to music, playing games, reading e-books and much more”). See also Press Release, Marvell Tech. Group Ltd., Marvell Announces Wireless / Wireline Integrated Packet Processor for GE Market (May 3, 2005), <http://www.marvell.com/company/news/pressDetail.do?releaseID=510>.

⁵¹ Press Release, Google Inc., Google to Acquire Motorola Mobility (Aug. 5, 2011), <http://investor.google.com/releases/2011/0815.html>; Press Release, Dep’t of Justice, Statement of the Department of Justice’s Antitrust Division on Its Decision to Close Its Investigations of Google Inc.’s Acquisition of Motorola Mobility Holdings Inc. and the Acquisitions of Certain Patents by Apple Inc., Microsoft Corp. and Research in Motion Ltd. (Feb. 3, 2012), <http://www.justice.gov/opa/pr/2012/February/12-at-210.html> (approving Google’s acquisition of Motorola Mobility).

to participate in this highly competitive innovation marketplace. To the extent that the Innovation Technology Joint Venture succeeds in creating innovative products or services, consumers will benefit.⁵²

Second, Congress and the federal antitrust agencies have recognized that research and development collaborations like the Innovation Technology Joint Venture are generally procompetitive. In particular, to ensure that the antitrust laws do not inappropriately deter procompetitive R&D joint ventures, Congress adopted the National Cooperative Research Act of 1984 (as amended),⁵³ which provides that such ventures are not illegal *per se*, and are subject to only single damages (rather than the usual treble damages) in antitrust lawsuits.⁵⁴ The parties have made the required filing with the DOJ and FTC so as to benefit from the provisions of this Act. The DOJ and FTC have likewise recognized that R&D joint ventures are typically procompetitive. In the *Competitor Collaboration Guidelines*, they explain that “[t]hrough the combination of complementary assets, technology, or know-how . . . [joint ventures] enable participants more quickly or more efficiently to research and develop new or improved goods,

⁵² Research agreements among competitors occur in other industries as well. For example, in August 2011, Ford and Toyota announced a deal to “co-develop a hybrid powertrain for rear-wheel-drive light trucks and SUVs,” which will allow the companies to share development costs while continuing to compete “truck for truck.” Martin LaMonica, CNET NEWS, *Why the Ford-Toyota Tie-Up Is a Big Deal* (Aug. 22, 2011), http://news.cnet.com/8301-11128_3-20095547-54/why-the-ford-toyota-hybrid-tie-up-is-a-big-deal/.

⁵³ As explained by the Progressive Policy Institute, the Act was “designed to promote innovation, facilitate trade, and strengthen the competitiveness of the United States in world markets.” Comments of Progressive Policy Institute at 1 (quoting Dep’t of Justice Antitrust Division, Filing a Notification Under the NCRPA, <http://www.justice.gov/atr/public/guidelines/ncrpa.html>). The goals of the Act are even more pertinent today, where “[t]he single most vibrant part of [the] economy is the communications sector” which has “generate[d] almost a half million jobs, while the rest of the economy has stagnated.” Progressive Policy Institute Comments at 1 (citing Michael Mandel, “Where the Jobs Are: The App Economy,” TechNet, Feb. 7, 2012, *available at* <http://www.technet.org/wp-content/uploads/2012/02/TechNet-App-Economy-Jobs-Study.pdf>).

⁵⁴ 15 U.S.C. § 4301, *et seq.*

services, or production processes.”⁵⁵ The DOJ has repeatedly endorsed the procompetitive benefits of R&D joint ventures in multiple industries.⁵⁶

Third, the Innovation Technology Joint Venture is not different in concept from joint development activities undertaken by other telecommunications companies, including some commenters. For example, Sprint already offers “integrated wireless and wireline solutions,”⁵⁷ and it has been able to do so in part because of its collaborations with other industry participants.⁵⁸ From Bellcore to CableLabs, the U.S. economy has benefitted from the fruits of innovative joint research. The prospects of innovation in the wireless/wireline broadband

⁵⁵ Dep’t of Justice & Fed. Trade Comm’n, ANTITRUST GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS § 3.31(a) (2000), *available at* <http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf>. “R&D exhibits positive spillovers that allow others beyond the innovator to benefit from R&D investment, [but] firms may underinvest in it from society’s perspective.” Technology Policy Institute Comments at 17. “One way to mitigate this market failure is to allow firms to pool resources through research joint ventures.” *Id.*

⁵⁶ *See, e.g.*, Press Release, Dep’t of Justice, Justice Department Approves Petroleum Exploration and Production Joint Research and Development Proposal (Apr. 23, 1997), <http://www.justice.gov/opa/pr/1997/April97/166at.htm> (approving R&D joint venture among Amoco, Arco, Exxon, Mobil, Shell, Texaco and Texas A&M University relating to oil exploration and production and stating that, “to the extent that the cooperative in fact engages in research efforts that would not be undertaken by individual firms, the joint venture may have the procompetitive effect of promoting innovation” (quoting Joel I. Klein, Ass’t Atty. Gen., Antitrust Division)).

⁵⁷ Sprint, Sprint Convergence: Integrated Network Solutions for Unified Communications, <http://convergence.sprint.com/> (last visited Mar. 1, 2012); *see* Matt Hamblen, PCWORLD, *AT&T Announces Integration of Wired and Wireless* (Apr. 19, 2007), http://www.pcworld.com/businesscenter/article/130933/atandt_announces_integration_of_wired_and_wireless.html (“AT&T says that it has integrated wire-line and wireless services and devices to it midsize and large business customers.”).

⁵⁸ Press Release, BroadSoft, Inc., Sprint Introduces Wholesale Mobile Integration (Sept. 13, 2010), <http://www.broadsoft.com/news/2010/sprint-introduces-wholesale-mobile-integration/> (“Wholesale Mobile Integration enables Sprint’s wholesale customers to deliver a converged solution to their business customers, integrating their wireline and wireless voice networks” and “[b]y collaborating with BroadSoft, the leading global provider of application server technology that enables fixed-line, mobile and cable service providers to deliver voice and multimedia services over their IP-based networks, Sprint will extend its reach to U.S.-based carriers that do not currently have wireless networks.”).